
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3029 **Hearing Date:** July 2, 2024
Author: Bains
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Controlled substances*

HISTORY

Source: Author

Prior Legislation: AB 1598 (Davies), Ch. 201, Stats. 2022

Support: Peace Officers Research Association of California

Opposition: ACLU California Action

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to add xylazine and its derivatives to Schedule III of the state Uniform Controlled Substances Act with specified exemptions, contingent upon it receiving the same designation under the federal Controlled Substances Act, and to exclude from the definition of “drug paraphernalia” any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of xylazine and other emerging adulterants, as defined.

Existing law establishes the California Uniform Controlled Substances Act, which regulates controlled substances. (Health & Saf. Code, § 11000 et seq.)

Existing law classifies controlled substances into five schedules according to their danger and potential for abuse. Provides that Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054-11058.)

Existing law makes the possession of a Schedule III controlled substance that is not a narcotic drug a misdemeanor, unless upon the prescription physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, and punishable by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to Penal Code section 1170 (h) if that person has one or more prior convictions for specified offenses. (Health & Saf. Code § 11377, subd. (a).)

Existing law defines “drug paraphernalia” as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing,

harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human a body a controlled substance. (Health & Saf. Code, §§ 11014.5, subd. (a), 11364.5, subd. (a).)

Existing law provides that drug paraphernalia includes testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances. (Health & Saf. Code, §§ 11014.5, subd. (a)(4), 11364.5, subd. (d)(4).)

Existing law exempts testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl from the definition of “drug paraphernalia.” (Health & Saf. Code, §§ 11014.5, subd. (d), 11364.5, subd. (g).)

This bill adds xylazine and other emerging adulterants as determined by the State Department of Public Health to the provision of law that excludes testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of specified substances from the definition of “drug paraphernalia.”

This bill adds the following to Schedule III:

- Xylazine.
- Xylazine-M (2,6-Methylenedimethylaniline).
- Xylazine-M (N-thiourea-2,6-dimethylaniline).
- Xylazine-M (sulfone-HO-) isomer 2.
- Xylazine-M (HO-2,6-dimethylaniline isomer 1).
- Xylazine-M (HO-2,6-dimethylaniline isomer 2).
- Xylazine M (oxo-).
- Xylazine-M (HO-) isomer 1.
- Xylazine-M (HO-) isomer 1 glucuronide.
- Xylazine-M (HO-) isomer 2.
- Xylazine-M (HO-) isomer 2 glucuronide.
- Xylazine-M (HO-oxo-) isomer 1.
- Xylazine-M (HO-oxo-) isomer 1 glucuronide.
- Xylazine-M (HO-oxo-) isomer 2.
- Xylazine-M (HO-oxo-) isomer 2 glucuronide.
- Xylazine-M (sulfone).
- Xylazine-M (sulfone-HO-) isomer 1.
- Any compound, mixture, or preparation which contains any quantity of any of these substances.

This bill provides exemptions from Schedule III scheduling for the substances listed above under the following circumstances:

- Dispensing or prescribing for, or administration to, a nonhuman species of a drug containing xylazine that has been approved by the Secretary of Health and Human Services under Section 360b of Title 21 of the United States Code.
- Dispensing or prescribing for, or administration to, a nonhuman species that is permissible under Section 360b(a)(4) of Title 21 of the United States Code.

- The manufacturing, distribution, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug pursuant to Section 360b of Title 21 of the United States Code.
- The manufacturing, distribution or use of a xylazine bulk chemical for pharmaceutical compounding by licensed pharmacists at 503b pharmacies or by veterinarians in the event that xylazine as an active pharmaceutical ingredient manufactured under Section 360b of Title 21 of the United States Code becomes unavailable.
- Any other use approved or permissible under the Federal Food, Drug, and Cosmetic Act.

This bill provides that its provisions do not take effect until xylazine is placed on Schedule III of the federal Controlled Substances Act.

COMMENTS

1. Need For This Bill

According to the author:

Xylazine is being mixed with other drugs sold on the streets, most notably fentanyl, under the street name ‘tranq’. Since xylazine is not an opioid, the standard overdose treatments like naloxone or Narcan can be less effective or even fail. California lacks policy to fully track xylazine’s growing role in our opioid crisis, much less mitigate its dangers. AB 3029 will reclassify xylazine as a Schedule III controlled substance while protecting its legitimate uses in veterinary medicine... This bill is an important step toward containing a rising threat before it becomes a bigger problem.

2. Controlled Substance Schedules

Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution, and dispensing of controlled substances. The Act groups drugs into five schedules with decreasing potential for physical or psychological harm, based on three considerations: accepted medical use; potential for abuse; and, safety or dependency liability. California’s controlled substances schedules largely follow the federal schedules.

- Schedule I controlled substances, such as heroin, ecstasy, and LSD, have a high potential for abuse and no generally accepted medical use.
- Schedule II controlled substances have a currently accepted medical use, with significant risk to patient safety, and have a high potential for abuse and dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, oxycodone, codeine, and amphetamine.
- Schedule III controlled substances have a currently accepted medical use, potential for abuse leading to moderate physical dependence. Examples of Schedule III controlled substances include ketamine and anabolic steroids.
- Schedule IV controlled substances have a currently accepted medical use, low potential for abuse which may lead to limited physical dependence. Examples of Schedule IV controlled substances include drugs include benzodiazepines.

- Schedule V controlled substances have a low potential for abuse or dependence. Examples of Schedule V controlled substances include buprenorphine and narcotic drugs containing non-narcotic active medicinal ingredients.

3. Xylazine

Xylazine, also known as tranq, is a non-opiate sedative, analgesic, and muscle relaxant only authorized in the U.S. for veterinary use by the FDA. (U.S. Department of Justice and Drug Enforcement Administration, *DEA Joint Intelligence Report: The Growing Threat of Xylazine and its Mixture with Illicit Drugs* (Oct. 2022), p. 1 available at <<https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>> [hereinafter DEA Joint Report].) It is not included in the federal controlled substances schedules, and it is not approved for consumption by humans. (*Ibid.*) In legal sales for veterinary use, xylazine is available in liquid form and sold in vials or preloaded syringes, with solutions prepared at a concentration appropriate for administration by injection based on the general size and weight of the species. (*Ibid.*) Xylazine is legitimately sold directly through pharmaceutical distributors and websites catering to veterinarians. (*Ibid.*)

Xylazine can be injected, sniffed, or consumed orally. (Centers for Disease Control and Prevention, *What You Should Know About Xylazine* available at <<https://www.cdc.gov/drugoverdose/deaths/other-drugs/xylazine/faq.html#:~:text=References-,What%20is%20xylazine%3F,approved%20for%20use%20in%20in%20people.>>.) People are most frequently exposed to xylazine while using illegal drugs, such as cocaine, heroin, and fentanyl, which are sometimes mixed with xylazine to enhance the effects of the drug it is being mixed with or to increase the price of the drug by increasing its weight. (*Id.*) The DEA reports that it has seized xylazine and fentanyl mixtures in almost all 50 states. (*Id.*) Between 2020 and 2021, DEA lab results found a 112% increase in the presence of xylazine in drug seizures in the Western region of the country. (DEA Joint Report, *supra* at p. 2.) Xylazine can cause respiratory depression similar to that of an opioid overdose which may increase the potential for a fatal outcome at a time when opioid overdose deaths remain high. (*Id.* at p. 4.) Due to the impact of xylazine on the opioid crisis, the White House designated fentanyl combined with xylazine as an emerging threat to the United States last year. (The White House, Office of the Press Secretary (Apr. 12, 2023) *Biden-Harris Administration designates fentanyl combined with xylazine as an emerging threat to the United States*, available at <<https://www.whitehouse.gov/ondcp/briefing-room/2023/04/12/biden-harris-administration--designates-fentanyl-combined-with-xylazine-as-an-emerging-threat-to-the-united-states/>>.)

4. Effect of This Bill

This bill adds xylazine and its derivatives to Schedule III of the state Uniform Controlled Substances Act but includes specified exemptions, primarily for veterinary use. The scheduling of xylazine and its derivatives is contingent upon xylazine receiving the same designation under the federal Controlled Substances Act.

This bill also adds xylazine and “other emerging adulterants as determined by the State Department of Public Health” to the provision of law that excludes testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of specified substances from the definition of “drug paraphernalia.”

5. Argument in Support

The Peace Officers Research Association of California writes:

AB 3029 would add xylazine to Schedule III of the act, except in certain circumstances relating to veterinary use, only after xylazine is placed on Schedule III of the federal Controlled Substances Act. The bill would also exclude from the prohibitions on paraphernalia any testing equipment to analyze a substance for the presence of xylazine and other emerging adulterants as determined by the State Department of Public Health.

6. Argument in Opposition

According to the ACLU California Action:

... The state's current reliance on criminalization of drug abuse does not work and adding new drugs, such as xylazine, to the list will do nothing to resolve the problems.

On any given day, at least 137,000 men and women are behind bars for drug possession across the United States. Tens of thousands more are convicted, cycle through jails and prisons, and spend extended periods on probation and parole, often burdened with crippling debt from court-imposed fines and fees. AB 3029 would contribute to these severe disparities and likely exacerbate racial disparities that exist today. ... Because drug enforcement is aimed at behavior which is inherently difficult to detect and does not involve a complaining "victim," it necessarily relies on law enforcement techniques ... that are arbitrary by nature and raise serious civil liberties concerns.

-- END --